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Seminar für Soziologie

From nuclear taboo to a prohibition (ban) on use: The next step to a nuclear-weapon-free world?

A taboo against the use of nuclear weapons has developed since 1945. The taboo is a normative prohibition on the use of nuclear weapons. It is associated with a sense of moral opprobrium regarding such weapons.¹

Summary

Increased attention by governments, international organisations and civil society to the catastrophic consequences of any potential use of nuclear weapons is strengthening a global expectation on States to prohibit such use and negotiate for their complete elimination. However, multilateral negotiations on nuclear disarmament have been blocked in the key multilateral forums. The nuclear armed States maintain programs for continued possession and modernisation of nuclear weapons. And an even wider group of countries continues to rely on nuclear deterrence in their security doctrines. This food-for-thought paper² examines whether, in this context, a preliminary step of a prohibition on use of nuclear weapons might be possible, similar to the 1925 prohibition on the use of chemical weapons, which codified the norm against chemical weapons use and paved the way for negotiations for the Chemical Weapons Convention.

Norm against use

There are a number of indications that a global norm against the use of nuclear weapons has developed. These include the:

- practice of non-use of nuclear weapons since August 9, 1945;
- affirmation of the practice of non-use in official documents and statements including the 2010 US Nuclear Posture Review – “It is in the U.S. interest and that of all other nations that the nearly 65-year record of nuclear non-use be extended forever.” – and the April 12, 2014 Joint Statement of the group of countries in the Non-Proliferation and Disarmament Initiative – “...it is in the interest of all nations that the nearly 69 year record of non-use of nuclear weapons be extended forever.;
- shift in nuclear planning by the NWS away from the use of nuclear weapons as potential war-fighting weapons and focusing virtually exclusively on them as weapons for deterrence³;

¹ *The Nuclear Taboo: The United States and the Non-Use of Nuclear Weapons Since 1945*, Nina Tannenwald

² This paper has been prepared by Alyn Ware, with thanks to Jana Jedlickova (PragueVision), Aaron Tovish (Mayors for Peace 2020 Vision Campaign) for their helpful input.

³ Nina Tannenwald writes that there has been a fundamental shift in thinking of political decision makers and military planners over the past 30-40 years about nuclear weapons use. What was once considered an operationally useable weapon likely to be used again at some stage in history, has turned into a weapon for which there is a general taboo on use. “The non-use of nuclear weapons since then [1945] remains the single most important phenomenon of the nuclear age...As military historians have noted, it is rare for a weapon found useful on one occasion to remain unused in the next. Such an outcome was not inevitable... In the first decades after World War II, many military and political leaders, and much of the

- affirmation by the International Court of Justice on the general illegality of the threat or use of nuclear weapons;
- affirmation by the Council of Delegates of the Red Cross and Red Crescent Societies of the incompatibility of the use of nuclear weapons with international humanitarian law;
- traction being gained by the humanitarian framework which highlights the catastrophic human and environmental consequences of any use of nuclear weapons.

In *The Nuclear Taboo: The United States and the Non-Use of Nuclear Weapons Since 1945*, Nina Tannenwald makes the case that, “A taboo against the use of nuclear weapons has developed since 1945. The taboo is a normative prohibition on the use of nuclear weapons. It is associated with a sense of moral opprobrium regarding such weapons.” She further argues that such a norm has developed due to a range of factors, including the global grassroots antinuclear weapons movement which made it impossible to think about nuclear weapons as just another weapon; the antinuclear politics at the United Nations (advanced particularly by non-nuclear countries); the strategic pressures and risks of escalation and the conscience of individual leaders who believed that nuclear weapons were morally repugnant and that they should be delegitimized.

Such a norm may have helped prevent a nuclear war since 1945, but is by no means a guarantee that nuclear weapons will not be used by accident, miscalculation or intent in the future. The norm does however indicate the possibility of a prohibition on use as a next step to further reduce the possibility of nuclear weapons use. Since non-use (and for that matter no-first-use) imply that a country is prepared to address non-nuclear

public, expected or feared that nuclear weapons would be used again at some point...’ However, “it is widely acknowledged today among nuclear policy analysts and public officials that a “nuclear taboo” exists at the global level’ .*The Nuclear Taboo: The United States and the Non-Use of Nuclear Weapons Since 1945*

⁴ [Joint statement on the humanitarian dimension of nuclear disarmament](#), delivered by Ambassador Benno Laggner of Switzerland to the First Session of the Preparatory Committee for the 2015 Review Conference

threats by non-nuclear means, a use-ban paves the way for the elimination of nuclear weapons. If the only reason for nuclear weapons is to threaten a retaliatory strike to deter the use of nuclear weapons by an adversary, then a universal agreement on non-use removes the conditions for retaining nuclear weapons, and the verified elimination of all nuclear weapons guarantees that there is no possibility of a threat of a nuclear strike requiring prevention by nuclear deterrence. A use-ban helps establish the conditions to achieve a nuclear weapon free world by eliminating the primary purpose for maintaining nuclear weapons.

To date, the allies under extended nuclear deterrence relationships and the nuclear-armed States – with the exception of China, India, Pakistan and North Korea – have rejected the calls from the non-NWs, UN Secretary-General and civil society to commence negotiations on a nuclear weapons convention or package of agreements to prohibit and eliminate nuclear weapons, because they still ascribe roles to nuclear weapons in their security doctrines, in particular the role to deter a nuclear strike. Most allies have also refused to endorse the joint statements on humanitarian consequences of nuclear weapons led by non-nuclear States⁴, which assert that that nuclear weapons should not be used *under any circumstances*, because they still subscribe to the threat of retaliatory strike as a way to deter a nuclear strike. They would be even less likely to ascribe to any agreement prohibiting possession of nuclear weapons, which would run contrary to their policies supporting nuclear deterrence and to their extended nuclear deterrence relationships with the US.

However, with a norm against use already generally accepted by nuclear weapon States and the allies, a move to prohibit use – or at least first-use – is not

of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons;
 Joint Statement on the humanitarian impact of nuclear weapons, delivered by Ambassador Abdul Samad Minty, Permanent Representative of South Africa to the United Nations at Geneva, 24 April 2013;
 Joint Statement on the humanitarian impact of nuclear weapons of 125 states, delivered by Dell Higgie of New Zealand to the UNGA 68: First Committee on 21 October 2013

such a big step and could find support amongst some of the nuclear-armed States and the allies.

China and India already subscribe to a policy of no-first-use. The US is very close, having adopted a policy of primary purpose – with the commitment to adopt policy of sole purpose, i.e. solely to deter nuclear first use.

The main sticking point with the NWSs and the allies with regard to a prohibition on use is their adherence to second-use, or retaliatory use, which is the basis of minimal nuclear deterrence, i.e. the perceived role that nuclear weapons play in deterring a nuclear attack by threatening a retaliatory attack with nuclear weapons.

Some analysts have thus called for an agreement on no-first use as the next step in lowering the role of nuclear weapons and paving the way for nuclear disarmament. However, the problem with a process to ban first-use is that it could be seen as legitimizing retaliatory use. Non-nuclear States might thus be very hesitant to support, even if they see it as a small step in the right direction by the NWS and the allies under extended nuclear deterrence.

It would thus be better to find an approach, if possible, that does not legitimize retaliatory use, and indeed strengthens the norm against any use, but allows for participation by States that could not go beyond no-first use as the next step for them.

Indeed, there is such an approach to a ban on use that could result in a use-ban agreement, and which might also challenge some NWS/allies to abandon nuclear deterrence entirely (in a way that does not undermine their non-nuclear security alliances/arrangements). This approach is modelled somewhat on the example of chemical weapons and the Geneva Gas protocol of 1925.

The Geneva Gas Protocol prohibited the use of chemical weapons but did not prohibit possession. As such, most of the main chemical weapons possessors joined. The protocol was strong on the chemical weapons ban, prohibiting use – not merely first use – of chemical weapons. However, some States parties signed on the basis of retaining the right to use chemical weapons in retaliatory use against States not parties to the protocol or in flagrant violation of the protocol. This arrangement

was sufficient to prevent the military use of poison gases during World War II and paved the way to prohibit and eliminate chemical weapons entirely under the Chemical Weapons Convention (CWC).

A ban on the use of nuclear weapons - supported by a number of nuclear-armed States, allies under extended nuclear deterrence as well as most if not all non-NWS - could possibly be achieved in the near future if a similar approach were adopted.

How to achieve a ban on use

There are a number of approaches to achieving a ban on use.

The Security Council could adopt a resolution declaring that the use – or first use – of nuclear weapons would constitute a crime against humanity and a threat to international peace and security. Given the current policies of the P5, it would be unrealistic to expect such a resolution anytime soon. However, what might be possible is a resolution affirming the practice of the non-use of nuclear weapons and the common interest of humanity that this practice be extended forever. Such a resolution would consolidate the norm of non-use and provide a demonstration of good faith by the NWS which currently appears lacking.

The UN General Assembly has already adopted a resolution, introduced by India, affirming that any use of nuclear weapons would be a crime against humanity, and calling for negotiations on a treaty to prohibit the use of nuclear weapons. However, this resolution has failed to attract support of many other nuclear-armed States and allied States. Even some non-NWS fail to support for various reasons including opposition to the Indian nuclear tests of 1998 and the lack of support of India for the NPT.

A fresh UN General Assembly resolution submitted by a cross-regional group such as the NPDI or the New Agenda Coalition on prohibition of use would have more chance of success. In order to get support from allied countries, such a resolution would probably have to forego an explicit reference to the criminality of any use of nuclear weapons, and focus instead on establishing the negotiations to prohibit use.

In addition, such a resolution would have to address the forum for negotiating such a ban. If the Conference on Disarmament is able to overcome

the 18-year long impasse that has prevented any negotiations, then this could be an appropriate forum. But there would be little use in mandating the CD to negotiate such a ban if the CD remains unable to commence such negotiations due to the consensus procedure which allows a veto power for any CD member.

One option, therefore, would be to establish a UNGA negotiating forum specifically for a use-ban agreement. The UNGA has established specific negotiating forums for a range of agreements including the Law of the Sea Convention, Statute for an International Criminal Court and Arms Trade Treaty.

Another option would be to give the UN Open Ended Working Group on Taking Forward Multilateral Nuclear Disarmament Negotiations (OEWG) a mandate to commence negotiations, or task the OEWG with preparatory work on a use-ban treaty including recommendations on the best forum to undertake negotiations.

A third option would be for a deliberation and negotiation process to arise out of a like-minded process external to the CD and the UN. The Landmines and Cluster Munitions Conventions were negotiated in this way. This could be an option arising out of the series of conferences on humanitarian consequences of nuclear weapon use held so far in Oslo and Mexico with the third one planned for Vienna in late 2014.

A fourth option would be for the UNGA to establish a Group of Governmental Experts to explore the feasibility and process for negotiating a use-ban agreement. This would more likely ensure the participation of key nuclear-armed States – which has advantages (any resulting proposals would include these States) and disadvantages (the nuclear-armed States could continue to block the commencement of negotiations).

Relationship to elimination

One sobering fact about the Geneva Gas Protocol of 1925 is that it took another 60 years to achieve the Chemical Weapons Convention prohibiting any use of chemical weapons, providing for the elimination of all stockpiles and establishing verification and enforcement measures.

This delay was of course influenced heavily by the political and security environments of those six decades – which included the Second World War and the Cold War. The more globalised and integrated economic and political environment of the 21st Century should enable a quicker transition to the comprehensive prohibition and elimination of nuclear weapons once a use-ban has been adopted.

On the other hand, there are other political and economic drivers that keep nuclear weapons in the doctrines of NWSs and the allies, including lack of confidence in compliance, status ascribed to nuclear weapons possession, political power from nuclear weapons and economic interest of the nuclear weapons industries. These drivers could ensure that nuclear weapons are maintained into the 22nd Century, unless parallel efforts are undertaken on other elements for a nuclear weapon free world alongside negotiations on a use-ban - possibly based on those outlined in the Model Nuclear Weapons Convention and those developed in the UN Open Ended Working Group on Taking Forward Multilateral Nuclear Disarmament Negotiations. Thus, negotiations for a use-ban should not be seen as the full solution to the nuclear threat, nor be undertaken in isolation from other efforts to establish the framework and elements for a nuclear-weapon-free world.

Conclusion

The heightened awareness of the catastrophic humanitarian and environmental consequences of any use of nuclear weapons is creating an expectation in the global community for action to prevent any such use. The adoption of a ban on use would be a significant measure to prevent such use and pave the way for negotiations to prohibit and eliminate nuclear weapons stockpiles in phased steps under an effective regime for verification and enforcement.



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